

June 27, 2013

## **City Wins Arts Tax Ruling In Court**

The Portland arts tax passed a major legal hurdle today, when Circuit Judge Kelly Skye ruled the tax constitutional.

The Arts Education and Access Income Tax was created by the city in 2012 and passed by 62 percent of voters in November. It provided funds for arts educators in area K-12 public schools, and funds for arts organizations in the region.

The issue received three legal challenges. The first was a challenge to the ballot title in 2012. In the second, a challenge in federal tax court was thrown out in May for a lack of legal standing.

Today's ruling clears the third legal hurdle.

"Asked and answered," Mayor Charlie Hales said, upon hearing the news today. "Can the challenges be appealed? Yes, but we don't know that they will. We want to wait to hear from the city attorney regarding our best options, and then we want to get the input of the entire City Council before moving forward."

The plaintiff in this case, George Wittemeyer, had argued that the arts tax was unconstitutional because it is a "head tax," or a tax on everybody. In response, Judge Skye wrote, "The Arts Tax is not a Poll or Head tax because it is not assessed per capita."

Commissioner Nick Fish praised the ruling. He is the City Council liaison to the Regional Arts and Culture Council. "It passes constitutional muster. We're very pleased," Fish said. "But not all potential legal arguments were addressed, and (the federal tax court) suit could be appealed, too. We'll seek the advice of the city attorney before moving forward."

After the suits were filed, Mayor Hales decided not to disburse the arts tax funds to school districts or arts organizations, until the courts clarified the legal status of the taxpayers' money. Distribution of that money had been scheduled for November 2013. In May, the mayor proposed a plan to distribute some of the money to the six area school districts, provided they would pay a portion of it back if the tax were deemed unconstitutional.

Hales said he would reach out to the superintendents of the six school districts immediately to explain the ruling and to discuss next steps.